IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I.T.R. No.60 of 1990
Date of Decision:03.07.2007

The Commissioner of Income-tax, Haryana

.....Applicant

Vs.

Dr. N.S.Chadha, Rohtak

.....Respondent

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present:- Mr. Yogesh Putney, Advocate for the revenue.

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M.M.Kumar, J.

This is a reference made under Section 256(1) of the Income Tax Act, 1961 (for brevity, `the Act'), at the instance of the revenue, which has emerged out of an order dated 27.7.1989 passed by the Income Tax Appellate Tribunal, Delhi Bench `E', Delhi (for short, `the Tribunal') in I.T.A. No.4557(Delhi)/1986 in respect of assessment year 1983-84. The following question of law has been referred for the opinion of this Court:-

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in affirming the order of the AAC of Income tax holding that the income from paying clinic should be taxed under the head `Profits or gains of business or profession' and not under the head `Salary'?"

It may be mentioned at the outset that the assessee was informed through registered A.D. on 4.5.2006 and the notice issued to him was received back duly served. Despite service of notice, the assessee has not put in appearance, therefore, we proceed to hear the arguments.

Facts are not in dispute. The assessee has derived his income from paying clinic and salary. He has claimed that the income from paying clinic was assessable under the head `Income from profession and business' and, accordingly, also claimed expenses incurred for earning that income

from paying clinic.

Mr. Yogesh Putney, learned counsel for the revenue has canvassed that the afore-mentioned question of law has been answered in favour of revenue by a Division Bench judgment of this Court rendered in the case of **Commisioner of Income Tax v. Dr. Mrs. Usha Verma,** (2002) 254 ITR 404. According to him, the facts in the present case are also similar to those which were before the Division Bench. He has, therefore, submitted that the income of the assessee from the paying clinic is required to be taxed under the head `Salary' and not under the head `Profits or gains of profession'.

We have thoughtfully considered the submission made by the learned counsel and find merit in the same. The income of the assessee has to be assessed under the head `Salary' as has been held by the Division Bench in the case of **Dr. Mrs. Usha Verma's case (supra)**. This view is also supported by Section 17(1)(iv) of the Act which has been interpreted by Hon'ble the Supreme Court in Karamchari Union v. Union of India, (2000) 243 ITR 143.

For the afore-mentioned reasons, the question of law is answered in favour of the revenue and against the assessee.

(M.M.KUMAR)
JUDGE

July 03, 2007 **(AJAY KUMAR MITTAL)**
renu **JUDGE**